

FLEISCHMAN AND WALSH, L. L. P.

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

1400 SIXTEENTH STREET, N. W.

WASHINGTON, D. C. 20036

TEL (202) 939-7900 FAX (202) 745-0916

INTERNET www.fw-law.com

AARON I. FLEISCHMAN

FLEISCHMAN AND WALSH, P. C.

CHARLES S. WALSH

ARTHUR H. HARDING

STUART F. FELDSTEIN

JEFFREY L. HARDIN

STEPHEN A. BOUCHARD

R. BRUCE BECKNER

CHRISTOPHER G. WOOD

SETH A. DAVIDSON

JAMES F. MORIARTY

MATTHEW D. EMMER

HOWARD A. TOPEL

LOUIS H. DUPART\*

SHARON O'MALLEY MONAHAN\*\*

LAWRENCE R. FREEDMAN

ERIC E. BREISACH\*\*\*

JOEL D. BONFIGLIO

RECEIVED

OCT 31 2000

October 31, 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

JILL KLEPPE MCCLELLAND  
REGINA FAMIGLIETTI PACE  
CRAIG A. GILLEY  
SUSAN A. MORT  
MARK D. PIHLSTROM  
BETH-SHERRI AKYERKO  
BRIAN C. MALADY  
THOMAS E. KNIGHT  
SETH M. WARNER  
MARK B. DENBO+  
CARA E. SHEPPARD  
STEVEN J. HAMRICK  
KEVIN C. BRENNAN  
FILOMENA D'ELIA  
ARDEN T. PHILLIPS  
PATRICK L. GILMORE +  
RICHARD L. DAVIS  
S. JENELL TRIGG  
JENNIFER B. TOMCHIN  
SHARI L. WILKOZEK ++  
LISA CHANDLER CORDELL  
DAVID J. LAVAN+++  
AIMEE E. KNAPP+  
MICHAEL W. RICHARDS +  
PETER B. SANCHEZ +++

VIA HAND DELIVERY

Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Room TW-B204  
Washington, DC 20554

\* VA BAR ONLY  
\*\* MA BAR ONLY  
\*\*\* MI AND IL BAR ONLY  
+ MD BAR ONLY  
++ IL BAR ONLY  
+++ NY BAR ONLY

**Re: In re Petition of NewPath Holdings, Inc. for an Expedited Declaratory Ruling  
on the Scope of Unbundled Access to the High Frequency Portion of Loops,  
CC Docket No. 00-50**

Dear Ms. Roman Salas:

On August 30, 2000, NewPath Holdings, Inc. ("NewPath") met with Commission staff to discuss and address questions and/or comments regarding NewPath's petition in the above-referenced proceeding. NewPath filed an ex parte summary of this meeting with the Commission on August 31, 2000, in accordance with FCC rules.

Among the issues discussed in the meeting, Commission staff requested that NewPath provide additional information on three issues raised in NewPath's petition: (1) NewPath's plans to serve small and rural communities; (2) the nature and scope of ILEC resale obligations and service offerings; and (3) interpreting 47 C.F.R. § 51.319(h)(3) to find that an ILEC "is providing, and continues to provide, analog circuit-switched voiceband services" on resale loops.<sup>1</sup> NewPath now submits an original and one copy of this letter to address each of these issues.

**A. NewPath Service to Small & Rural Communities**

As noted in its petition, NewPath is a small, emerging competitive provider of xDSL and other advanced services headquartered in Des Moines, Iowa. With an initial service rollout

<sup>1</sup> In its petition, NewPath identifies "resale loops" as loops on which a carrier is reselling the ILEC's analog, circuit-switched voiceband services.

No. of Copies rec'd 04  
List A B C D E

scheduled for mid-September, 2000, NewPath plans to provide high-speed data services primarily to small business and residential customers in tier-two and tier-three markets throughout the Midwest. More specifically, recent NewPath service plans include over one hundred communities in sixteen Midwestern states, with the majority of those communities having less than 50,000 residents, and in some cases, less than 10,000. Indeed, NewPath's current business plans exclude many of the larger cities (*e.g.*, Kansas City, St. Louis, Chicago, Minneapolis, Indianapolis, Little Rock) in its targeted service areas to focus on smaller, underserved markets.<sup>2</sup>

NewPath's long-term service commitment and focus is on advanced services technologies, and its current plans for its target markets only include these offerings. Despite its current plans, however, NewPath, like the Commission, is aware of the growing demand for bundled packages of voice and data services on the same line like those now offered by the ILECs and large UNE-based voice providers. Before the Line Sharing Order, NewPath's only opportunities to bundle its data services with analog voice service on the same line were to build its own facilities or become a UNE-based voice provider. Both of these options would require the diversion of substantial financial, administrative, and regulatory resources away from NewPath's core commitment and expertise – state-of-the-art advanced services.

With the Line Sharing Order, the Commission has created the possibility for NewPath to offer its customers a competitive, bundled package of voice and data services on the same line without substantially diverting NewPath's long-term commitment to developing and offering advanced services technologies. This cost effective and competitive alternative is line sharing on resale loops – an alternative that falls squarely within the purposes and rationales of the Line Sharing Order. Indeed, the alternative is entirely consistent with the language of the Commission's line sharing rules – a fact that presumably underlies ILEC refusals to adopt the telling language from the rules in line sharing agreements. NewPath has initiated this proceeding to definitively establish its ability to pursue this alternative and, in turn, expand and improve the competitive service choices of the small and underserved communities it plans to reach, as well as the service choices of all Americans.

## **B. ILEC Resale Obligations**

As noted above, NewPath's request in this proceeding is to definitively establish its right to obtain unbundled access to the data portion of loops on which it is reselling ILEC voice service. Because NewPath's request involves resale loops, a component of the Commission's analysis necessarily turns on the nature and scope of an ILEC's resale obligations under Section 251(c)(4) of the Telecommunications Act of 1996 ("Act"). In this proceeding, NewPath has argued that the relief it requests is consistent with and is confirmed by the resale framework

---

<sup>2</sup> NewPath has devoted and continues to devote substantial resources to provide high-speed data service to small and underserved communities. Among other things, the company has (1) obtained (or has an application pending for) state certification to provide service in each of its target states; (2) obtained (or is in the process of negotiating) interconnection agreements with each of the major ILECs for these regions, as well as a number of other ILECs (*e.g.*, Alltel, CenturyTel, Sprint), and (3) made substantial investments in advanced services equipment, as well as initiated and established costly ILEC central office collocations in a number of the underserved areas that NewPath plans to serve.

established by the Act, FCC rules and precedent, and in existing ILEC interconnection arrangements. The following discussion details this framework.

Under the Act, Section 251(c)(4) imposes on ILECs “[t]he duty – (A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and (B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications services . . . .” The Act does not specifically define the term “resale” or otherwise attempt to characterize the relationship between carriers beyond the general obligation to provide services for resale without unreasonable restrictions.

The Commission’s implementation of the resale duty in its *Local Competition First Report & Order*<sup>3</sup> and interconnection rules also do not expressly define the term “resale,” but do provide additional guidance beyond the general resale obligation in the Act. According to the Commission’s rules, an ILEC “must provide services to requesting telecommunications carriers for resale that are equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that the [I]LEC provides these services to others, including end users.”<sup>4</sup> The Order and rules also allow an ILEC to prohibit cross-class selling, exempt short term promotions from wholesale pricing, and impose the end user common line charge on the reselling carrier.<sup>5</sup> In contrast, if an ILEC has grandfathered a service, the Commission’s Order and rules require the ILEC to make the services available for resale to the same customer group to which the ILEC is providing the service.<sup>6</sup> Finally, the Commission’s Order and rules require an ILEC to unbrand or rebrand a resold service for a requesting reseller.<sup>7</sup>

Before the Act, the Commission’s primary guidance on resale was provided in a 1976 Report and Order establishing regulatory policies concerning resale and shared use of common carrier services and facilities.<sup>8</sup> In this Order, the Commission defined resale to be “an activity wherein one entity subscribes to the communications services and facilities of another entity and then reoffers communications services and facilities to the public (with or without ‘adding value’) for profit.”<sup>9</sup> Later in the Order, the Commission refined this broad definition into two distinct categories of “resale” -- brokerage and processing. According to the Commission, a resale broker:

. . . *never physically controls* the utilization of a communications facility or service provided by the underlying carrier. The broker merely acts as an intermediary between the underlying carrier and an end user, *who ultimately*

---

<sup>3</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, FCC 96-325 (rel’d Aug. 8, 1996) (“*Interconnection Order*”).

<sup>4</sup> 47 C.F.R. § 51.603(b).

<sup>5</sup> 47 C.F.R. §§ 51.613(a) & 51.617.

<sup>6</sup> 47 C.F.R. § 51.615.

<sup>7</sup> 47 C.F.R. § 51.613(c).

<sup>8</sup> *See In re Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities*, Report and Order, Docket No. 20097, FCC 76-641 (rel. July 16, 1976).

<sup>9</sup> *Id.* at ¶ 17.

*controls the utilization of the communications facility or service subscribed to by the broker.*<sup>10</sup>

In contrast, “[t]he resale processor differs from the broker not only because it physically controls the underlying carrier’s services and facilities, but also because it may incur substantial costs to engage in the operation.”<sup>11</sup>

In the Act, Congress did not adopt the broker and processor labels previously used by the FCC. The same concepts underlying these two distinct concepts nevertheless appear to have been captured in the Act and in its implementation by the FCC under new titles: resale (brokerage) and UNEs (processing). Like brokerage, Congress and the FCC have simply characterized resale under the Act as a transfer of “service,” without any express ownership or control rights granted to a reseller over the underlying network facilities. In contrast, like processing, an ILEC’s UNE obligations under the Act expressly contemplate CLEC access to and use of an ILEC’s network equipment and facilities. FCC rules also instruct that a CLEC can provide any service over UNEs that can be offered by means of such UNEs.<sup>12</sup>

Existing interconnection arrangements between carriers also support a definition of resale under the Act that is analogous to the intermediary, brokerage role described by the FCC in its 1976 order. For example, the resale sections of NewPath’s existing agreements with Qwest and Verizon simply obligate the ILECs to provide to NewPath those “services” that the ILEC provides to its own end users.<sup>13</sup> Moreover, these sections provide NewPath with no express control of or access to the facilities over which these services are provided, leaving all maintenance, repair, and testing responsibilities with the ILEC. SBC’s current multi-state template offering is even more instructive, by providing that “[n]othing herein shall be interpreted to authorize CLEC to repair, maintain, *or in any way touch* SBC-ILEC’s network facilities, including those on End User premises.”<sup>14</sup>

NewPath’s request in this proceeding is entirely consistent with the scope and nature of an ILEC’s resale obligations under the Act, FCC precedent, and existing interconnection arrangements. The fundamental inequity addressed in the Line Sharing Order was an ILEC’s exclusive control over (and, in turn, a CLEC’s prejudicial inability to access) the data frequencies on a customer’s telephone line. This inequity is no less present on a resale loop than on a loop carrying retail ILEC POTS. No commenter in this proceeding has identified any restriction on resale (or for that matter UNEs) that would preclude the Commission from affirmatively and definitively allowing a CLEC to obtain unbundled access to the data

---

<sup>10</sup> *Id.* at ¶ 19 (emphasis added).

<sup>11</sup> *Id.* at ¶ 22.

<sup>12</sup> See 47 C.F.R. § 51.307(c).

<sup>13</sup> The resale sections of NewPath’s current interconnection agreements with Qwest for the state of Iowa (Covad opt-in) and Verizon for the state of Indiana (AT&T opt-in) are included as Attachments A & B, respectively.

<sup>14</sup> See Section 7.3, Appendix Resale (10/1/00 version downloaded on 10/31/00), SBC 13-State Template Interconnection Agreement (emphasis added). The SBC multi-state template offering is available on SBC’s website (<https://clec.sbc.com/unrestr/interconnect/multi/index.cfm>).

frequencies on a loop on which it is also reselling ILEC voice service.<sup>15</sup> The Commission should grant NewPath's request.

### C. "Providing" Voice Service on Resale Loops

In this proceeding, NewPath has requested that the Commission definitively establish that, under 47 C.F.R. § 51.319(h)(3), an ILEC "is providing, and continues to provide, analog circuit-switched voiceband services" on a loop when the ILEC is providing such service on both a retail *and* wholesale basis. As NewPath and others have noted in this proceeding, in both cases, ILECs retain the same discriminatory access to the data frequencies on a customer's telephone line that the Commission expressly set out to eliminate in the Line Sharing Order.

In discussing the terms "providing" and "provides" with NewPath, Commission staff inquired about any potential limitations placed on these words by statutory definitions. In particular, while the Act does not specifically define any variation of the term "provide," one variation of the term is used in defining the phrase "telecommunications carrier." Telecommunications carrier under the Act means "any provider of telecommunications services."<sup>16</sup> In turn, the Act defines "telecommunications service" to be "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."<sup>17</sup> From this, Commission staff has inquired whether the term "provide" in 47 C.F.R. § 51.319(h)(3) necessarily invokes a limitation of service offered only on a retail basis to the public. NewPath believes that it does not.

Seeking definition of "providing" and "provides" in the statutory definitions of "telecommunications carrier" and "telecommunications service" is flawed on two primary grounds. First, use of the word "provide" in this series of statutory definitions is only one of many instances in the Act where the term is used. While "provide" is qualified to mean service directly to the public in defining "telecommunications carrier" and "telecommunications service," in several other places in the Act, the term is clearly used to characterize service to

---

<sup>15</sup> ILEC commenters in this proceeding have argued that if Congress intended for resale and unbundled access to be provided on a single loop, it would have affirmatively said so. In other words, according to the argument, the Commission should imply from Congressional silence that UNEs and resale are mutually exclusive options and thus, that line sharing on resale loops is contrary to the Act. As noted in NewPath's previous submissions, if Congress' silence in the Act on the relationship between UNEs and resale speaks, it clearly does not say what the ILECs argue. First, unlike the ILEC position, providing UNEs and resale on the same line does not require any implication or speculation about Congressional intent. On its face, the broad, unqualified language of 251(c) obligates an ILEC to do exactly what NewPath is requesting in this proceeding – unbundled access and resale. Second, why should the Commission assume that Congress intended to create (through silence) an anticompetitive limitation on otherwise unqualified duties? Taken to its logical conclusion, the ILEC position would require the Commission to find that Congress intended to insulate an entire market served by voice resellers from advanced services competition, or perhaps even advanced services availability, on a customer's telephone line. If anything, the ILEC position is more properly read as an unreasonable and discriminatory condition and limitation on, and deterrent to, resale – a *prima facie* violation of the terms of the Act.

<sup>16</sup> See 47 U.S.C. § 153(44).

<sup>17</sup> See 47 U.S.C. § 153(46).

other carriers.<sup>18</sup> The Commission itself has also used the term to describe ILEC duties to the public-at-large, as well as other carriers.<sup>19</sup> Indeed, the Commission has used the term “provide” to specifically describe an ILEC’s resale obligations.<sup>20</sup> As used in the Act and by the Commission, the term “provide” is clearly not a static term, but one defined by context.

A focus on the context of “provides” and “providing” in 47 C.F.R. § 51.319(h)(3) drives the second basis why a focus on the statutory definitions of “telecommunications carrier” and “telecommunications service” is flawed. The rule does not use either of these defined terms. In drafting the rule, the Commission chose to limit an ILEC’s responsibility to line share on loops on which it provides analog, circuit-switched voiceband “services,” not “telecommunications services.” As an initial matter, on its face, the rule does not even invoke the maze of statutory definitions that is the focus of Commission staff’s current inquiries. Of equal importance, however, is that the rationales of the Line Sharing Order create an instructive and controlling context for the rule that would make any strained diversion to these defined (and noticeably absent) terms completely arbitrary and contrary to the Commission’s express line sharing goals. The language used by the Commission in 47 C.F.R. § 51.319(h)(3) was an attempt to capture those instances where ILECs have discriminatory access to the data frequencies on loops, and must be properly and reasonably read to achieve just that. The Commission should rule that an ILEC is providing voiceband services on resale loops under 47 C.F.R. § 51.319(h)(3).

In addition to statutory definitions, Commission staff pointed to an excerpt from the Executive Summary stating that ILECs are not required to provide line sharing if they are not “providing analog voice service to the customer.” Commission staff also noted paragraph 72, which outlines an ILEC’s rights in the event a “customer terminates its incumbent LEC provided voice service.” Finally, Commission staff noted paragraph 73, which clarifies an ILEC’s right to disconnect a customer on a shared line when the customer does not pay its telephone bill. Commission staff inquired whether these passages (collectively “Customer Language”) necessarily preclude line sharing in any situation other than when an ILEC has a direct, retail relationship with the end user customer. Again, NewPath believes that they do not.

The interpretation of the Customer Language is at the heart of the controversy and uncertainty fueling this proceeding. In the balance, the Commission is faced with two conflicting interpretations. The interpretation raised by Commission staff and argued by the ILECs is one of these interpretations. Under this interpretation, an ILEC only provides voice service “to the customer” in a retail scenario. The second interpretation of the Customer Language takes a broader and more practical approach. Under this interpretation, an ILEC is “providing analog voice service to the customer,” as stated in the Executive Summary of the Line Sharing Order, when the ILEC is providing the service directly (on a retail basis) *or* indirectly (through a reseller). This same concept extends to a customer’s termination of its “incumbent LEC provided voice service,” as stated in paragraph 72. When an end user cancels

---

<sup>18</sup> See, e.g., 47 U.S.C. §§ 251(b)(3) (dialing parity), 251(c)(2) (interconnection), 251(c)(3) (unbundled access) & 251(c)(4) (collocation).

<sup>19</sup> See, e.g., 47 C.F.R. §§ 51.305(a) (interconnection to carriers); 51.307 through 51.321 (UNEs to carriers); 51.323 (collocation to carriers).

<sup>20</sup> See, e.g., 47 C.F.R. §§ 51.603(b); 51.607(a); 51.609(b) & (d); 51.607(b); *Interconnection Order* at ¶¶ 872, 888, 891, 896, 897, 906, 908, 911, 912, and 914.

its telephone service on an ILEC retail *or* resale loop, the end user is, as a fundamental and technical matter, terminating service that is ultimately provided by the ILEC. This interpretation is also entirely consistent with paragraph 73, in which the Commission deals with an ILEC's rights in the event an end user does not pay its phone bill. While the passage seems to describe a retail relationship, the paragraph was a response to a specific retail scenario presented by GTE. Clarification of one aspect of line sharing in response to a specific request does not definitively or rationally inform the scope or nature of line sharing beyond that single aspect – including line sharing on resale loops.

In weighing the two conflicting interpretations of the Customer Language, the ILECs would have the Commission stop at the Customer Language alone – a simplistic course that arguably leaves the ILECs with a more attractive interpretation. Like the statutory definitions discussed above, however, the Customer Language cannot be evaluated in isolation. Instead, each passage is colored and defined by the policy, intent, and language that surround it. Against this backdrop, the attractiveness of the ILEC interpretation fades quickly into an arbitrary limitation that falls well short of the Commission's clear goals and expectations in the Line Sharing Order. In contrast, these same goals and expectations fully support the interpretation of the Customer Language that embraces line sharing on resale loops.

The purpose of the Line Sharing Order was to provide competitive providers with access to the data frequencies on loops where an ILEC is able, on an exclusive basis, to use such frequencies to provide advanced services at a fraction of the cost required for other service alternatives. Fundamentally, the exclusive access and cost advantage described by the Commission arise whenever an ILEC is providing voice service on the loop, without any regard for the whether the service is retail or resale. From this central goal, the cracks in the ILEC interpretation appear. Why would the Commission express a clear and unqualified intent to eliminate all cases of discriminatory ILEC access and then, without any explanation, arbitrarily exclude a substantial market segment where such discrimination exists? To fully realize the Commission's purpose and intent in the Line Sharing Order, a more expansive interpretation of line sharing that includes resale loops is clearly a more proper and rational interpretation.

An interpretation of the Customer Language that includes resale loops is not only favored by the purpose and intent of the Line Sharing Order generally, it is supported by the Commission's actual language describing the loops subject to line sharing as a whole. As an initial matter, the language adopted for the final rule does not refer to or otherwise define any relationship between an ILEC and an end user. Instead, the rule focuses simply on an ILEC's voice service presence on a loop – a focus consistent with the Commission's overall purpose and expectations. Paragraph 72 of the Line Sharing Order is the Commission's primary discussion underlying its rule. The paragraph reaffirms a focus on an ILEC's voice service presence on a loop, not who the ILEC sells the service to. When concluding that an ILEC must be "providing analog voice service" on a shared loop in paragraph 72, the Commission's surrounding discussion was not focused on customer relationships, but the mere absence of ILEC provided service on a loop. In particular, the Commission discussed completely unoccupied loops (dry loops) and, in the alternative, loops on which a provider other than an ILEC occupied the entire frequency range (UNE platforms). The remaining range of loops naturally left by these two

excluded categories is loops on which an ILEC is providing, in whatever manner, analog voice service. It is this remaining range that the Commission properly reflected in the final rule.

Against this backdrop, the Customer Language can and should be interpreted to support line sharing on resale loops. The balance of reason clearly supports a finding that the Commission's references to ILEC service provided "to the customer" are a simple, although misleading, shorthand to identify the provision of ILEC service, in whatever manner, on an end user's particular loop; not an inexplicable limitation of line sharing to only a portion of the range of loops falling within the Commission's clear line sharing goals.

## **Conclusion**

For the reasons set forth above and in NewPath's other submissions, NewPath repeats its request for an expedited declaratory ruling definitively establishing unbundled access to the high frequency portion of the loop on loops where it is reselling ILEC analog voice service. Nothing in the Line Sharing Order precludes this interpretation. Indeed, anything short of this interpretation cannot be rationally supported by the policy, language, and intent of the Line Sharing Order as a whole.

Feel free to contact me with any further questions or comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lawrence R. Freedman / RLF".

Lawrence R. Freedman  
Counsel for NewPath Holdings, Inc.

cc: Anna Gomez - FCC  
Jared Carlson - FCC  
Margaret Egler - FCC  
Bill Dever - FCC  
Jessica Rosenworcel - FCC  
Sandra Adams



# **ATTACHMENT A**

Co-Providers operating in region in a manner consistent with existing inter-company processing agreements. Whenever the daily usage information is transmitted to a carrier, it will contain the records for these types of calls as well.

## **10.5 Compensation**

- 10.5.1 If and as approved by the appropriate state Commission, compensation for OSS access will consist of an initial access fee which will be determined based on the specific access engineered and implemented for Covad and is a function of the numbers of Covad business office and repair service representatives accessing the system. The fee will include costs for hardware (if purchased through USWC), software (which must be purchased through USWC), telecommunications links and labor incurred to establish the interfaces to USWC's OSS for Covad. The costs will be substantiated by purchasing invoices for the communications and computing hardware and software, and by time reports for the labor expended in their design and implementation. Labor will be billed at the prevailing rates for contract labor for similar services. Any and all charges set forth hereunder must be approved by the appropriate state Commission prior to USWC's sending Covad any OSS invoices.
- 10.5.2 The ongoing charge will be billed at a rate to be specified by the Commission at the completion of an appropriate cost study hearing.

## **11. RESALE**

### **11.1 Description**

- 11.1.1 USWC Basic Exchange Telecommunications Service and Basic Exchange Switched Features (as defined in Section 3) and IntraLATA Toll originating from USWC exchanges will be available for resale from USWC pursuant to the Act and will reference terms and conditions (except prices) in USWC tariffs, where applicable. Appendix A lists services which are available for resale under this Agreement and applicable discounts.
- 11.1.2 The Parties agree that, at this time, certain USWC services are not available for resale under this Agreement and certain other USWC services are available for resale but at no discount, as identified in Appendix A or in individual state tariffs. The availability of services and applicable discounts identified in

Appendix A or in individual tariffs are subject to change pursuant to the Rates and Charges sub-section of this Resale section.

## **11.2 Scope**

- 11.2.1 Basic Exchange Telecommunications Service, Basic Exchange Switched Features and IntraLATA Toll may be resold only for their intended or disclosed use and only to the same class of end user to which USWC sells such services e.g., residence service may not be resold to business end users.
- 11.2.2 USWC shall provide to Covad services for resale that are equal in quality, subject to the same conditions (including the conditions in USWC's effective tariffs), within provisioning time intervals that are substantially equal to the intervals USWC provides these services to others, including its end users, and in accordance with any applicable state Commission service quality standards, including standards a state Commission may impose pursuant to Section 252 (e)(3) of the Act.

## **11.3 Ordering and Maintenance**

- 11.3.1 Covad, or Covad's agent, shall act as the single point of contact for its end users' service needs, including without limitation, sales, service design, order taking, provisioning, change orders, training, maintenance, trouble reports, repair, post-sale servicing, billing, collection and inquiry. Covad shall make it clear to its end users that they are end users of Covad for resold services. Covad's end users contacting USWC will be instructed to contact Covad; however, nothing in this Agreement, except as provided below, shall be deemed to prohibit USWC from discussing its products and services with Covad's end users who call USWC for any reason.
- 11.3.2 Covad shall transmit to USWC all information necessary for the installation (billing, listing and other information), repair, maintenance and post-installation servicing according to USWC's standard procedures, as described in the USWC resale operations guide that will be provided to Covad. When USWC's end user or the end user's new service provider discontinues the end user's service in anticipation of moving to another service provider, USWC will render its closing bill to the end user effective with the disconnection. If USWC is not the local service provider, USWC will issue a bill to Covad for that portion of the service provided to Covad should Covad's end user, a new service provider, or Covad request service be discontinued to the end user. USWC will notify Covad by FAX, OSS, or other processes when an end user moves to another service provider.

USWC will not provide Covad with the name of the other Reseller or service provider selected by the end user. The Parties agree that they will not transfer to each other their respective end users whose accounts are in arrears. The Parties further agree that they will work cooperatively together to develop the standards and processes applicable to the transfer of such accounts.

11.3.3 Covad shall provide USWC and USWC shall provide Covad with points of contact for order entry, problem resolution and repair of the resold services.

11.3.4 Prior to placing orders on behalf of the end user, Covad shall be responsible for obtaining and have in its possession Proof of Authorization ("POA"). POA shall consist of documentation acceptable to USWC of the end user's selection of Covad. Such selection may be obtained in the following ways:

11.3.4.1 The end user's written Letter of Authorization or LOA.

11.3.4.2 The end user's electronic authorization by use of an 800 number,

11.3.4.3 The end user's oral authorization verified by an independent third party (with third party verification as POA).

11.3.4.4 A prepaid returnable postcard supplied by Covad which has been signed and returned by end user. Covad will wait fourteen (14) days after mailing the postcard before placing an order to change.

11.3.5 Covad shall make POAs available to USWC upon request. Prior to placing orders that will disconnect a line from another Reseller's account Covad is responsible for obtaining all information needed to process the disconnect order and re-establish the service on behalf of the end user. Should an end user dispute or a discrepancy arise regarding the authority of Covad to act on behalf of the end user, Covad is responsible for providing written evidence of its authority to USWC within three (3) business days. If there is a conflict between the end user designation and Covad's written evidence of its authority, USWC shall honor the designation of the end user and change the end user back to the previous service provider. If Covad does not provide the POA within three (3) business days, or if the end user disputes the authority of the POA, then Covad must, by the end of the third business day:

- 11.3.5.1      notify USWC to change the end user back to the previous Reseller or service provider, and
- 11.3.5.2      provide any end user information and billing records Covad has obtained relating to the end user to the previous Reseller, and
- 11.3.5.3      notify the end user and USWC that the change has been made, and
- 11.3.5.4      remit to USWC a charge of \$100.00 ("slamming charge") as compensation for the change back to the previous Reseller or service provider.
- 11.3.6      If an end user is switched from Covad back to USWC and there is a dispute or discrepancy with respect to such change in service provider, Covad may request to see a copy of the POA which USWC has obtained from the end user to effectuate a return to USWC as the end user's service provider. If USWC is unable to produce a POA within three (3) business days, USWC shall change the end user back to Covad (or other previous Reseller) without imposition of any Customer Transfer Charge.
- 11.3.7      Covad shall designate the Primary Interexchange Carrier (PIC) assignments on behalf of its end users for interLATA services and intraLATA services when intraLATA presubscription is implemented.
- 11.3.8      When end users switch from USWC to Covad, or to Covad from any other Reseller, such end users shall be permitted to retain their current telephone numbers if they so desire and do not change their service address to an address served by a different central office. USWC shall take no action to prevent Covad end users from retaining their current telephone numbers.
- 11.3.9      Covad and USWC will employ the procedures for handling misdirected repair calls as specified in the Coordinated Repair Calls section of this Agreement.

#### **11.4 Covad Responsibilities**

- 11.4.1      Covad must send USWC complete and accurate end-user listing information for Directory Assistance, Directory Listings, and 911 Emergency Services using USWC's resale order form and process. Covad must provide to USWC accurate end-user information to ensure appropriate listings in any databases in which USWC is required to retain and/or maintain end-user

information. USWC assumes no liability for the accuracy of information provided by Covad.

11.4.2 Covad may not reserve blocks of USWC telephone numbers, except as allowed by tariffs.

11.4.3 Covad is liable for all fraud associated with service to its end-users and accounts. USWC takes no responsibility, will not investigate, and will make no adjustments to Covad's account in cases of fraud unless such fraud is the result of any intentional act or gross negligence of USWC. Notwithstanding the above, if USWC becomes aware of potential fraud with respect to Covad's accounts, USWC will promptly inform Covad and, at the direction of Covad, take reasonable action to mitigate the fraud where such action is possible.

11.4.4 In accordance with the Act, Covad will indicate the date it will offer to residential and business subscribers telephone exchange services. Covad will provide a three year forecast within ninety (90) days of signing this Agreement. During the first year of the term of this Agreement, the forecast shall be updated and provided to USWC on a quarterly basis. Thereafter, during the term of this Agreement Covad will provide updated forecasts from time to time, as requested by USWC. The initial forecast will provide:

- The date service will be offered (by city and/or state)
- The type and quantity of service(s) which will be offered
- Covad's anticipated order volume
- Covad's key contact personnel

The information provided pursuant to this paragraph shall be considered Proprietary Information under the Nondisclosure section of this Agreement.

11.4.5 In the event USWC terminates the provisioning of any resold services to Covad for any reason, including disconnection of Covad for failure to make payment as required herein, Covad shall be responsible for providing any and all necessary notice to its end users of the termination. In no case shall USWC be responsible for providing such notice to Covad's end users. USWC will provide notice to Covad of USWC's termination of a resold service on a timely basis consistent with Commission rules and notice requirements.

## 11.5 Rates and Charges

- 11.5.1 Resold services as listed in Appendix A are available for resale at the applicable discount percentage or rate per minute set forth in Appendix A or at the retail tariff rates for services available for resale but excluded from the wholesale pricing arrangement in this Agreement.

However, state Commissions may do any of the following (collectively referred to hereinafter as "Order") during the term of this Agreement:

- establish wholesale discount rates through decisions in arbitration, interconnection and/or resale cost proceedings;
- establish other recurring and nonrecurring rates related to resale, including but not limited to Customer Transfer Charges and Slamming Charges ("Other Resale Charges"); and
- order that certain services be made available for resale at specified wholesale discount rates.

If a state Commission orders services to be available for resale, the Parties agree that they will, on a state-by-state basis, revise Appendix A to incorporate the services determined by such Order into this Agreement, effective on the date ordered by a Commission. When a state Commission, through a decision in arbitration, identifies services that must be available for resale at wholesale discount rates, such decision shall be deemed to have defined that such services are generally available to Resellers in that state. If a state Commission establishes wholesale discount rates and Other Resale Charges to be made generally available to Resellers or establishes a resale tariff, the Parties agree that they will, on a state-by-state basis, revise Appendix A to incorporate such wholesale discount rates and/or Other Resale Charges into this Agreement effective on the date ordered by a Commission; provided, however, that USWC shall have a reasonable time to implement system or other changes necessary to bill the Commission ordered rates or charges.

The rates for those resold services initially included in the wholesale pricing arrangement under this Agreement shall be subject to true-up to the wholesale discount rates established by a Commission Order making such rates generally available to Resellers or established by a resale tariff, retroactively to the effective date of this Agreement. Any true-up shall be on a service-by-service basis if wholesale discount rates are established by a Commission on such a basis.

Services excluded from the wholesale pricing arrangement under this Agreement as identified in Appendix A, shall be made available on a going forward basis from the date of a Commission Order that orders such services be made generally available to any Reseller in the state where such a Commission Order is issued. Such services shall be available at the discount rate applicable to basic exchange business service identified in Appendix A; provided, however, that when a Commission Order establishes wholesale discount rates for such services as generally available to Resellers, Appendix A shall be revised to incorporate the wholesale discount rates generally available to Resellers.

If a state Commission fails to issue such an Order or make effective such a tariff by the end of the first year of this Agreement, either USWC or Covad may elect to renegotiate this Section of the Agreement.

- 11.5.2 If the resold services are purchased pursuant to Tariffs and the Tariff rates change, charges billed to Covad for such services will be based upon the new Tariff rates less the applicable wholesale discount as agreed to herein or established by resale Tariff. The new rate will be effective upon the Tariff effective date.
- 11.5.3 A Customer Transfer Charge (CTC) as specified in Appendix A applies when transferring any existing account or lines to Covad. Tariffed, non-recurring charges will apply to new installations.
- 11.5.4 A Subscriber Line Charge (SLC) will continue to be paid by Covad without discount for each local exchange line resold under this Agreement. All federal and state rules and regulations associated with SLC as found in the applicable tariffs also apply.
- 11.5.5 Covad will pay to USWC the PIC change charge without discount associated with Covad end user changes of inter-exchange or intraLATA carriers.
- 11.5.6 Covad agrees to pay USWC when its end user activates any services or features that are billed on a per use or per activation basis subject to the applicable discount in Appendix A as such may be amended pursuant to Section 11.5.1 above (e.g., continuous redial, last call return, call back calling, call trace, etc.).
- 11.5.7 Resold services are available only where facilities currently exist and are capable of providing such services without construction of additional facilities or enhancement of existing facilities. However, if Covad requests that facilities be constructed or



enhanced to provide resold services, USWC will review such requests on a case-by-case basis and determine, in its sole discretion, if it is economically feasible for USWC to build or enhance facilities. If USWC decides to build or enhance the requested facilities, USWC will develop and provide to Covad a price quote for the construction. If the quote is accepted, Covad will be billed the quoted price and construction will commence after receipt of payment.

11.5.8 Nonrecurring charges will not be discounted and will be billed at the applicable Tariff rates.

11.5.9 As a part of the resold line, USWC provides and Covad accepts, at this time, operator services, directory assistance, and intraLATA long distance with standard USWC branding. Covad is not permitted to alter the branding of these services in any manner when the services are a part of the resold line without the prior written approval of USWC. However, at the request of Covad and where technically feasible, USWC will rebrand operator services and directory assistance in Covad's name, provided the costs associated with such rebranding are paid by Covad.

## **11.6 Collateral and Training**

The Parties will jointly develop procedures regarding Covad's use of USWC's retail product training materials. Except for any rights granted by USWC to Covad for the use or copying of product training material, product training provided under this Agreement shall be considered "Proprietary Information" as described in this Agreement, and shall be subject to the terms and conditions specified therein.

## **11.7 Directory Listings**

USWC will accept at no charge one primary listing for each main telephone number belonging to Covad's end user based on end user information provided to USWC by Covad. USWC will place Covad's listings in USWC's directory listing database for directory assistance purposes and will make listings available to directory publishers and to other third parties. Additional terms and conditions with respect to directory listings are described in the Ancillary Services and Arrangements section of this Agreement.

## **11.8 Billing**

11.8.1. USWC shall bill Covad and Covad is responsible for all applicable charges for the resold services as provided herein. Covad shall also be responsible for all tariffed charges and charges

separately identified in this Agreement associated with services that Covad resells to an end user under this Agreement.

- 11.8.2 USWC shall provide Covad, on a monthly basis, within 7-10 days of the last day of the most recent billing period, in an agreed upon standard electronic billing format, billing information including (1) a summary bill, and (2) individual end user sub-account information consistent with the samples provided to Covad for Covad to render end user bills indicating all recurring and nonrecurring charges associated with each individual end user's account for the most recent billing period.

## **11.9 Deposit**

- 11.9.1 USWC may require Covad to make a suitable deposit to be held by USWC as a guarantee of the payment of charges. Any deposit required of an existing Reseller is due and payable within ten days after the requirement is imposed. The amount of the deposit shall be the estimated charges for the resold service which will accrue for a two-month period.
- 11.9.2 When the service is terminated, or when Covad has established satisfactory credit, the amount of the initial or additional deposit, with any interest due as set forth in applicable Tariffs, will, at Covad's option, either be credited to Covad's account or refunded. Satisfactory credit for a Reseller is defined as twelve consecutive months service as a Reseller without a termination for nonpayment and with no more than one notification of intent to terminate service for nonpayment. Interest on the deposit shall be accumulated by USWC at a rate equal to the federal discount rate, as published in the Wall Street Journal from time to time.

## **11.10 Payment**

- 11.10.1 Amounts payable under this Resale Section are due and payable within thirty (30) days after the bill date of USWC's invoice. During the initial three billing cycles of this Agreement, Covad and USWC agree that undisputed amounts shall be paid as provided herein. Covad and USWC further agree that, during said three billing cycle period, they will cooperate to resolve amounts in dispute or billing process issues in a timely manner but no later than sixty (60) days after the bill date of USWC's invoice or identification and notice of the billing process issue. Disputed amounts will be paid within thirty (30) days following resolution of the dispute.
- 11.10.2 After the three (3) month period outlined above, Covad will pay the bill in full within 30 days after the bill date of the invoice.

Billing disputes will be processed and jointly resolved. Any disputed amounts that USWC remits to Covad will be credited on the next billing cycle including an interest credit of 1.5% per month compounded.

- 11.10.3 A late payment charge of 1.5% applies to all billed balances which are not paid by 30 days after the bill date shown on the invoice. USWC agrees, however, that the application of this provision will be suspended for the initial three billing cycles of this Agreement and will not apply to amounts billed during those three cycles.
- 11.10.4 USWC may discontinue processing orders for the failure by Covad to make full payment for the resold services provided under this Agreement within thirty (30) days of the due date on Covad's bill. USWC agrees, however, that the application of this provision will be suspended for the initial three billing cycles of this Agreement and will not apply to amounts billed during those three cycles.
- 11.10.5 USWC may disconnect for the failure by Covad to make full payment for the resold services provided under this Agreement within sixty (60) days of the due date on Covad's bill. Covad will pay the Tariff charge required to reconnect each end user line disconnected pursuant to this paragraph. USWC agrees, however, that the application of this provision will be suspended for the initial three billing cycles of this Agreement and will not apply to amounts billed during those three cycles.
- 11.10.6 Collection procedures and the requirements for deposit are unaffected by the application of a late payment charge.
- 11.10.7 USWC shall credit Covad's account the amount due for any trouble or out-of-service conditions in the same manner that USWC credits the accounts of its own end users and pursuant to any applicable provisions in USWC's Tariffs. USWC shall reflect the amount of such credits on an individual end user telephone number basis in the billing information USWC provides Covad.
- 11.10.8 In the event billing disputes relate to service quality issues, the dispute shall be referred to the USWC account executive assigned to Covad who will evaluate the facts and circumstances of the service quality issues and will work with Covad to resolve the dispute.

## **ATTACHMENT B**

## **PART I LOCAL SERVICES RESALE**

### **24. Telecommunications Services Provided for Resale**

Upon request by AT&T in accordance with Section 25.1 and subject to the restrictions contained in Section 25.3 hereunder, GTE shall make available to AT&T at the applicable rate set forth in Attachment 14, any Telecommunications Service that GTE currently offers or may hereafter offer at retail to subscribers that are not telecommunications carriers. GTE shall also provide to AT&T local service customers of each such Telecommunications Service the service support functions GTE provides to its own local service customers of the same Telecommunications Service. Such Telecommunications Services and service support functions (preordering, ordering, provisioning, maintenance, repair and billing) provided by GTE pursuant to this Section are collectively referred to as "Local Services."

### **25. General Terms and Conditions for Resale**

#### **25.1 Ordering**

25.1.1 Orders for resale of Local Services will be placed utilizing a standard Local Service Request ("LSR") form. A complete and accurate LSR must be provided by AT&T before a request can be processed; provided, however, that immaterial deviations or omissions in the LSR will not prevent an order from being processed. The Parties shall apply all of the principles set forth in C.F.R. §64.1100 to the process for customer selection of a primary exchange carrier. Each Party shall transfer the customer's service features and functionalities "as is" to the other Party when requested by a customer. For purposes of this Section 25, an "as is transfer" is the transfer of all the telecommunications services and features available for resale that are currently being provided for the specified account without the requirement of a specific enumeration of the services and features on the LSR.

25.1.2 A Letter of Authorization ("LOA") will be required before Local Services will be provided for resale to a subscriber that currently receives local exchange service from GTE or from a local service provider other than AT&T. Such LOA may be a blanket letter of authorization in the form attached as Attachment 16 (Blanket LOA) or such other form as agreed upon by AT&T and GTE. When a Blanket LOA has been provided by AT&T, GTE shall not require an additional disconnect order, LOA or other writing from a customer, or another LEC, in order to process an order for Local Service. Each Party will provide the capability for customers to retain their current phone number in the event that they change local service providers to the extent technically feasible, allowing them to retain all existing features and functionalities.

25.1.3 GTE shall include an AT&T Customer's listing in its Directory Assistance database as part of the Local Service Request ("LSR") process. GTE will

honor AT&T Customer's preferences for listing status, including non-published and unlisted, as noted on the LSR and will enter the listing in the GTE database which is used to perform Directory Assistance functions as it appears on the LSR.

- 25.1.4 GTE shall accept requests for a change in the primary interexchange carrier of a local exchange customer of AT&T only from AT&T.

**25.2 Pricing**

The prices to be charged to AT&T for Local Services under this Agreement are set forth in Part V of this Agreement.

**25.3 Restrictions on Resale**

To the extent consistent with the applicable rules and regulations of the FCC and the Commission, AT&T may resell all GTE Local Services as defined in GTE's tariffs. The following restrictions shall apply to the resale of Local Services by AT&T: (i) AT&T shall not resell to one class of customers a Local Service that is offered by GTE only to another class of customer and (ii) AT&T shall only sell "grandfathered" Local Services to an end-user customer who subscribes to such service from GTE at the time of its selection of AT&T as its primary local exchange carrier.

- 25.4 GTE shall not be required to provide to AT&T Local Services offered at a special promotional rate if:

- 25.4.1 Such promotions involve rates that will be in effect for no more than ninety (90) days; and

- 25.4.2 Such promotional offerings are not used to evade the wholesale rate obligation; for example, by making available a sequential series of ninety (90) day promotional rates.

**25.5 Dialing and Service Parity**

- 25.5.1 GTE will provide the same dialing parity to AT&T Customers as similarly-situated GTE Customers, such that, for all call types, an AT&T Customer is not required to dial any greater number of digits than a similarly-situated GTE Customer; provided however with respect to intra-LATA dialing, GTE shall provide dialing parity to AT&T customers in the State in accordance with the provisions and schedule established by the Commission.

- 25.5.2 GTE will provide service levels for Local Services for resale that are equal to service levels for similarly-situated GTE Customers, such that there is no loss of features or functionalities including, but not limited to: same dial tone and

ringing; same capability for either dial pulse or touch tone recognition; flat and measured services; speech recognition as available; same extended local free calling area; 1+ IntraLATA toll calling; InterLATA toll calling and international calling; 500, 700, 800, 900, 976 and Dial Around (10xxx) Services; restricted collect and third number billing; all available speeds of analogue and digital private lines; off-premise extensions; CENTRANET and ISDN.

**25.6 Changes in Retail Service**

GTE will notify AT&T of proposed new retail services or modifications to existing retail services forty-five (45) days prior to the expected date of regulatory approval of the new or modified services. If new services or modifications are introduced with less than forty-five (45) days notice to the regulatory authority, GTE will notify AT&T at the same time it determines to introduce the new or modified service. With respect to changes in prices for existing retail services or related resale rates, GTE will notify AT&T at the same time as GTE begins internal implementation efforts (i.e., at least at the time that GTE's Product Management Committee is notified of the proposed change) or obtains internal approval to make the price change, whichever is sooner.

**26. Requirements for Specific Services**

26.1 [Intentionally deleted]

**26.2 CLASS/LASS and Custom Features Requirements**

AT&T may purchase the entire set of CLASS/LASS and Custom features and functions, or a subset of any one or any combination of such features, on a customer-specific basis, without restriction on the minimum or maximum number of lines or features that may be purchased for any one level of service, provided such CLASS/LASS and Custom features are available to GTE Customers served by the same GTE Central Office. GTE shall provide to AT&T a list of CLASS/LASS and Custom features and functions within ten (10) business days of the Effective Date and shall provide updates to such list when new features and functions become available. GTE shall provide to AT&T a list of all services, features, and products including a definition of the service (by specific reference to the appropriate tariff sections) and how such services interact with each other. GTE shall provide features and services by street address guide and by switch. All features shall be at least at parity with the GTE service offering.

26.3 This Section intentionally left blank.

**26.4 Intercept and Transfer Service**

GTE shall provide intercept and transfer service to AT&T for AT&T Customers on the same basis and for the same length of time as such service is available to similarly-situated GTE Customers. To that end, when an end-user customer transfers service from GTE to AT&T, or from AT&T to GTE, and does not retain its original telephone number, the Party formerly providing service to the end user will provide, upon request, a referral announcement on the original telephone number. The announcement will provide the new number of the customer.

**26.5 E911/911 Services**

GTE shall provide to AT&T, for AT&T Customers, E911/911 call routing to the appropriate PSAP. AT&T shall provide AT&T Customer information to GTE, and GTE shall validate and provide AT&T Customer information to the PSAP. GTE shall use its service order process to update and maintain, on the same schedule that it uses for its end users, the AT&T Customer service information in the ALI/DMS (Automatic Location Identification/Location Information Database Management System) used to support E911/911 services, pursuant to National Emergency Number Agency (NENA) standards. AT&T shall have the right to verify the accuracy of the information regarding AT&T Customers in the ALI database.

**26.6 Telephone Relay Service**

GTE will provide the following information to AT&T at no additional charge:

- (i) information concerning a customer's qualification for Telephone Relay Service (TRS) on the Customer Service Record (CSR) when that customer chooses AT&T for local service; and
- (ii) all usage billing information which GTE receives from a provider of TRS for TRS usage by an AT&T Customer.

**26.7 Voice Mail Related Services**

Nothing in this Agreement shall limit the right of AT&T to purchase features capabilities of voice mail services in accordance with GTE's tariffs. In addition, nothing in this Agreement shall limit the right of AT&T to combine features capabilities of voice mail services purchased in accordance with GTE's tariffs with any Local Services purchased for resale in accordance with this Agreement.

**26.8 Voluntary Federal Customer Financial Assistance Programs**

Local Services provided to low-income subscribers, pursuant to requirements established by the appropriate state or federal regulatory body, include programs such as Voluntary Federal Customer Financial Assistance Programs, such as Lifeline, and Link-up America (collectively referred to as



"Voluntary Federal Customer Financial Assistance Programs") and Directory Assistance - Exempt. When a GTE Customer eligible for these services chooses to obtain Local Service from AT&T, GTE shall forward to AT&T on the Customer Service Record information regarding such customer's eligibility to participate in such programs. If GTE under the applicable laws of the State cannot provide the CSR to AT&T, GTE shall otherwise inform AT&T of such customer's eligibility.

**27. Advanced Intelligent Network**

- 27.1 GTE will provide AT&T access to the GTE Service Creation Environment (SCE) to design, create, test, deploy and provision AIN-based features, equivalent to the access GTE provides to itself, providing that security arrangements can be made. AT&T requests to use the GTE SCE will be subject to request, review and testing procedures to be agreed upon by the parties.
- 27.2 When AT&T utilizes GTE's Local Switching network element and requests GTE to provision such network element with a Currently Available AIN trigger, GTE will provide access to the appropriate AIN Call Related Database for the purpose of invoking either a GTE AIN feature or an AT&T developed AIN feature described in 27.1, above.
- 27.3 When AT&T utilizes its own local switch, GTE will provide access to the appropriate AIN Call Related Database for the purpose of invoking either a GTE AIN feature or an AT&T developed AIN feature described in 27.1, above.
- 27.4 Any mediation to GTE's AIN database will be performed on a competitively neutral, nondiscriminatory basis. Any network management controls found necessary to protect the SCP from an overload condition must be applied on a nondiscriminatory basis for all users of that database, including GTE. GTE and AT&T agree that any load mediation will affect all links to the STP, including GTE's, in a like manner. AT&T will provide the information necessary to ensure that GTE is able to engineer sufficient capacity on the AIN SCP platform.

**28. Routing to Directory Assistance and Operator Services**

- 28.1 Where AT&T purchases either Local Services or Local Switching as an Unbundled Element, upon AT&T's request, GTE will, where technically feasible, provide the functionality and features required to modify the AT&T Customer's line at GTE's local switch (LS) to route all calls to the AT&T Network for local Directory Assistance and the AT&T Platform for Operator Services. AT&T shall pay GTE's costs, if any, pursuant to the pricing

standards of Section 252(d) of the Act and in such amounts or levels as determined by the Commission for implementation of such routing.

## **28.2 Directory Assistance**

Upon AT&T's request, and where technically feasible, GTE shall route local Directory Assistance calls, including 411 and (NPA) 555-1212, dialed by AT&T Customers directly to the AT&T platform, unless AT&T requests otherwise pursuant to Section 28.7.2. AT&T shall pay GTE's costs, if any, pursuant to the pricing standards of Section 252(d) of the Act and in such amounts or levels as determined by the Commission for implementation of such routing.

## **28.3 Operator Services**

Upon AT&T's request, and where technically feasible, GTE shall route local Operator Services calls (0+, 0-) dialed by AT&T Customers directly to the AT&T Local Operator Services platform, unless AT&T requests otherwise pursuant to Section 28.7.1. Such traffic shall be routed over trunk groups specified by AT&T which connect GTE end offices and the AT&T Local Operator Services platform, using standard Operator Services dialing protocols of 0+ or 0-. Where intraLATA presubscription is not available, GTE will provide the functionality and features within its local switch (LS), to route AT&T Customer dialed 0- and 0+ intraLATA calls to the AT&T designated line or trunk on the Main Distributing Frame (MDF) or Digital Cross Connect (DSX) panel via Modified Operator Services (MOS) Feature Group C signaling. Where intraLATA presubscription is available, AT&T Customer dialed 0- and 0+ intraLATA calls will be routed to the intraLATA PIC carrier's designated operator services platform. In all cases, GTE will provide post-dial delay no greater than that provided by GTE for its end user customers. For switches lacking the existing capacity and capability to provide the customized rerouting described in this Section 28, GTE shall develop alternative forms of customized routing. AT&T shall pay GTE's costs, if any, pursuant to the pricing standards of Section 252(d) of the Act and in such amounts or levels as determined by the Commission for implementation of such routing.

## **28.4 Repair Calls**

In the event an AT&T Customer calls GTE with a request for repairs, GTE shall provide the AT&T Customer with AT&T's repair 800-telephone number. AT&T agrees to provide GTE with AT&T's repair 800-telephone numbers.

In the event a GTE Customer calls AT&T with a request for repairs, AT&T shall provide the GTE Customer with GTE's repair 800-telephone number. GTE agrees to provide AT&T with GTE's repair 800-telephone number.

**28.5 Non-discriminatory Treatment**

All direct routing capabilities described herein shall permit AT&T Customers to dial the same telephone numbers for AT&T Directory Assistance, Local Operator and the same number of digits for Repair Services that similarly-situated GTE Customers dial for reaching equivalent GTE services. AT&T and GTE will use 800/888 numbers where necessary to achieve this result.

**28.6 Emergency Calls**

Within thirty (30) days of AT&T's request, GTE shall in accordance with Applicable Law, use commercially reasonable efforts to assist AT&T in obtaining the emergency public agency (e.g., police, fire, ambulance) telephone numbers linked to each NPA-NXX. Such data will be transmitted in a mutually agreeable format. GTE shall not be liable for any inaccuracies contained in such data. GTE will, in a timely manner, transmit to AT&T upon AT&T's request, changes, alterations, modifications and updates to such data.

**28.7 Optional Routing**

**28.7.1 Operator Services:** AT&T may request GTE to route AT&T Customers to GTE Operator Services. In this case, the requirements for GTE-provided Operator Services as part of the Total Services Resale service shall be those requirements specified in Attachment 2, "Unbundled Elements", Section 5.1, "Operator Services."

**28.7.2 Directory Assistance:** AT&T may request GTE to route AT&T Customers to GTE's Directory Assistance. In this case, the requirements for GTE-provided Directory Assistance Services as part of the Total Services Resale service shall be those requirements specified in Attachment 2, "Unbundled Elements", Section 6, "Directory Services."

**28.7.3** GTE shall brand the GTE provided Operator Services and Directory Assistance as requested by AT&T for AT&T Customers unless GTE places a restriction on such branding which is approved by the Commission as reasonable and nondiscriminatory.

**28.8 Line Information Database Updates**

GTE shall update and maintain AT&T Customer information in the GTE Line Information Database ("LIDB") in the same manner and on the same schedule that it maintains information in LIDB for GTE Customers.

**28.9 Telephone Line Number Calling Cards**

Upon request by an AT&T Customer or by AT&T on behalf of an AT&T Customer, and effective as of the date of an end user's subscription to AT&T service (or such later date as such request is received), GTE will remove any GTE-assigned telephone line calling card number (including area code) ("TLN") from GTE's LIDB. AT&T may issue a new telephone calling card to such customer, utilizing the same TLN, and AT&T shall have the right to enter such TLN in AT&T's LIDB for calling card validation purposes.

**28.10 End Office Features**

GTE shall provide the following end-office features in those end offices in which such features are available to GTE Customers: CLASS features; Repeat Dial Capability; Multi-line Hunting; and trunk connectivity to private branch exchange switches (PBX's) and Direct Inward Dialed Services and all other end-office features that GTE makes available to GTE Customers.

**28.11 Call Blocking**

Upon AT&T's request and when available to similarly-situated GTE Customers, GTE will provide blocking on a line by line basis of an AT&T Customer's access to any or all of the following call types: 900/976; bill to third and collect; and such other call types for which GTE provides blocking to similarly situated GTE Customers.

**28.12 Law Enforcement and Service Annoyance**

Not later than forty-five (45) business days after the Effective Date, GTE and AT&T will begin the process of developing procedures to handle requests from law enforcement agencies for service termination, wire taps and provisions of Customer Usage Data pursuant to a lawful process as well as procedures to handle AT&T Customer complaints concerning harassing or annoying calls. Such procedures will include, but not be limited to, a process for AT&T to interface with GTE regarding law enforcement and service annoyance issues on a 24 hour per day, 7 days a week basis and otherwise on the same basis as GTE provides access for its own customers.

**29. Service Support Functions**

**29.1 Electronic Interface**

29.1.1 [Intentionally Deleted.]

29.1.1.1 [Intentionally Deleted.]

29.1.2 [Intentionally Deleted.]

- 29.1.3 GTE will make available all services and functions covered under this Agreement via the then Currently Available national interface options provided to AT&T by GTE for purposes of connecting to GTE's Operations Support Systems ("OSS"). GTE and AT&T will mutually agree upon the date for implementation of the interface options in the State.
- 29.1.4 [Intentionally Deleted.]
- 29.1.5 [Intentionally Deleted.]
- 29.1.6 GTE shall provide the same information, of the same quality and within the same time frames for Pre-Ordering, Ordering/Provisioning, Maintenance/Repairs and Billing to AT&T as GTE provides to itself. The Parties recognize that GTE is not required to establish new systems or processes in order to provide information to AT&T which GTE does not provide to itself.
- 29.1.7 GTE shall recover its costs of creating the permanent OSS gateway and any interim interfaces in accordance with Section 42 of this Agreement.
- 29.2 **Service Standards**
  - 29.2.1 GTE shall ensure that all Service Support Functions used to provision Local Service to AT&T for resale are provided at a quality level equal to that which GTE provides to itself, to its end users or to its affiliates.
  - 29.2.2 Not later than twenty (20) business days after the Effective Date of this Agreement, GTE and AT&T shall begin the process of developing mutually agreed-upon escalation and expedite procedures to be employed at any point in the Local Service Pre-Ordering, Ordering/Provisioning, Testing, Maintenance, Billing and Customer Usage Data transfer processes to facilitate rapid and timely resolution of Disputes.
- 29.3 **Point of Contact for the AT&T Customer**
  - 29.3.1 Except as otherwise provided in this Agreement or as directed by AT&T, AT&T shall be the single and sole point of contact for all AT&T Customers with respect to AT&T Local Services.
  - 29.3.2 GTE shall refer all questions regarding any AT&T service or product directly to AT&T at a telephone number specified by AT&T and provided to GTE for that purpose.
  - 29.3.3 GTE representatives who receive inquiries regarding AT&T services: (i) shall refer callers who inquire about AT&T services or products to the numbers provided; and (ii) will not in any way disparage or discriminate against AT&T, or its products or services.

**29.4 Single Point of Contact**

Each Party shall provide the other Party with a single point of contact ("SPOC") for each functional area for all inquiries regarding the implementation of this Part. Each Party shall accept all inquiries from the other Party and provide timely responses.

**29.5 Service Order**

To facilitate the ordering of new service for resale or changes to such service to an AT&T Customer, AT&T's representative will have access to GTE Customer information to enable the AT&T representative to perform the tasks enumerated below. Until electronic interfaces are established, these functions will be performed with the use of an 800 number.

- 29.5.1 Obtain customer account information through the same nondiscriminatory access to Operation Support Systems for pre-ordering, ordering, provisioning, maintenance and repair, and billing as GTE provides itself including information regarding the facilities and services assigned to individual customers.
- 29.5.2 Obtain information on all features and services available, including new services, by LSO identified by switch, NPA-NXX and customer street address.
- 29.5.3 Submit the AT&T Customer order by submitting an LSR using the agreed upon electronic interface (the Network Data Mover or NDM) for all desired features and services;
- 29.5.4 Assign a telephone number, including a vanity number, (if the AT&T Customer does not have one assigned). As an interim step prior to the implementation of the electronic interface specified in Section 29.1, GTE will establish an 800 (toll-free) number for AT&T;
- 29.5.5 Submit the appropriate directory listing using the agreed to EI;
- 29.5.6 Determine if a service call is needed to install the line or service;
- 29.5.7 Schedule dispatch and installation, if applicable;
- 29.5.8 Provide service availability dates to customer;
- 29.5.9 Order local and intraLATA toll service and enter AT&T Customer's choice of primary interexchange carrier on a single, unified order; and
- 29.5.10 Suspend, terminate or restore service to an AT&T Customer using agreed to methods (temporary disconnects for nonpayment may not be requested using the LSR).

**29.6 Provisioning**

- 29.6.1 After receipt and acceptance of an LSR, GTE shall provision such LSR in accordance with the following Intervals and in accordance with the service parity standards and other performance standards specified in Section 11 and Attachment 12.
- 29.6.2 GTE shall provide AT&T with service status notices, on a Real Time basis. Such status notices shall include the following:
  - 29.6.2.1 Firm order confirmation, including service availability date and information regarding the need for a service dispatch for installation;
  - 29.6.2.2 Notice of service installation issued at time of installation, including any additional information, such as material charges;
  - 29.6.2.3 Changes/rejections/errors in LSRs;
  - 29.6.2.4 Service completion;
  - 29.6.2.5 Jeopardies and missed appointments;
  - 29.6.2.6 Charges associated with necessary construction;
  - 29.6.2.7 Order status at critical intervals;
  - 29.6.2.8 Test results of the same type that GTE records for itself or its own customers.
- 29.6.3 GTE shall inform AT&T of overall change order flexibility and any changes thereto on a Real Time basis.
- 29.6.4 GTE shall notify AT&T prior to making any changes in the services, features or functions specified on the LSR. If an AT&T Customer requests a service change at the time of installation GTE shall refer the AT&T Customer to AT&T.
- 29.6.5 GTE shall provide provisioning support to AT&T on the same basis that it provides to other competitive LECs and to itself. GTE retains full discretion to control the scheduling of its provisioning workforce.
- 29.6.6 GTE shall provide training for all GTE employees who may communicate, either by telephone or face-to-face, with AT&T Customers, during the provisioning process. Such training shall include training on compliance with the branding requirements of this Agreement.
- 29.7 **Provision of Customer Usage Data**

GTE shall provide the Customer Usage Data recorded by GTE. Such data shall include complete AT&T Customer usage data for Local Service, (i.e., the

same usage data that GTE records for billing its own customers), in accordance with the terms and conditions set forth in Attachment 7.

**29.8 Service/Operation Readiness Testing**

- 29.8.1 In addition to testing described elsewhere in this Section 29, GTE shall test the systems used to perform the following functions at a negotiated interval and in no event less than ten (10) business days prior to commencement of GTE's provision of Local Service to AT&T, in order to establish system readiness capabilities:
- 29.8.1.1 All interfaces between AT&T and GTE work centers for Service Order Provisioning;
  - 29.8.1.2 Maintenance, Billing and Customer Usage Data;
  - 29.8.1.3 The process for GTE to provide customer profiles;
  - 29.8.1.4 The installation scheduling process;
  - 29.8.1.5 Network alarm reporting;
  - 29.8.1.6 Telephone number assignment;
  - 29.8.1.7 Procedures for communications and coordination between AT&T SPOC and GTE SPOC;
  - 29.8.1.8 Procedures for transmission of Customer Usage Data; and
  - 29.8.1.9 Procedures for transmitting bills to AT&T for Local Service.
- 29.8.2 The functionalities identified above shall be tested in order to determine whether GTE performance meets the service parity requirements and other performance standards specified in Section 11. GTE shall make available sufficient technical staff to perform such testing. GTE technical staff shall be available to meet with AT&T as necessary to facilitate testing. GTE and AT&T shall mutually agree on the schedule for such testing.
- 29.8.3 At AT&T's request, GTE shall provide to AT&T any results of the testing performed pursuant to the terms of this Part. AT&T may review such results and may notify GTE of any failures to meet the requirements of this Agreement.
- 29.8.4 GTE shall provide to AT&T the same type and quality of loop testing information that it provides to and records for itself. Where GTE develops loop testing information as a matter of course, it will make that information available to AT&T where such information is relevant to AT&T's business.



Where GTE maintains the internal discretion to test loops as needed, GTE will provide similar testing discretion to AT&T. AT&T shall pay the full cost of any such discretionary testing.

- 29.8.5 Within 60 days of the Effective Date of this Agreement, AT&T and GTE will agree upon a process to resolve cooperative testing issues and technical issues relating to GTE's provision of Local Services to AT&T. The agreed upon process shall include procedures for escalating disputes and unresolved issues up through higher levels of each company's management. If AT&T and GTE do not reach agreement on such a process within 60 days, any issues that have not been resolved by the Parties with respect to such process shall be submitted to the ADR procedures set forth in Section 15 and Attachment 1 of this Agreement unless both Parties agree to extend the time to reach agreement on such issues.

29.9 **Maintenance**

GTE shall provide maintenance in accordance with the requirements and standards set forth in Attachment 5 and in accordance with the service parity requirements set forth in this Agreement.

29.10 **Billing For Local Service**

- 29.10.1 GTE shall bill AT&T for Local Service provided by GTE to AT&T pursuant to the terms of this Part, and in accordance with the terms and conditions for Connectivity Billing and Recording in Attachment 6.
- 29.10.2 GTE shall recognize AT&T as the customer of record for all Local Service and will send all notices, bills and other pertinent information directly to AT&T.

30. **Pay Phone Lines and Pay Phone Services**

- 30.1 Intentionally left blank.
- 30.2 "Pay phone lines" are defined as the loop from the pay phone point of demarcation to the Service Wiring Center and includes all supporting central office functions and features.
- 30.3 GTE shall make available to AT&T for resale the following classes of pay phone lines:
- 30.3.1 Customer Owned Coin Operated Telephone (COCOT) Lines;
- 30.3.2 Coinless COCOT Lines;

- 30.3.3 Coin Lines in those jurisdictions where provision of such lines is required by law;
- 30.3.4 [This section left intentionally blank]
- 30.3.5 Semi Public Lines.
- 30.4 GTE shall also make available to AT&T for resale any future class of pay phone lines that GTE provides at retail to subscribers other than telecommunication carriers.
- 30.5 GTE shall make available pay phone line service options as follows:
- 30.6 When providing COCOT Lines to AT&T for resale, GTE shall offer the following, to the extent that GTE provides such services and in those jurisdictions and/or central offices where available: originating line screening; billed number screening; PIC protection for all 1+ inter and intraLATA traffic (when presubscription is authorized); one way and/or two way service (if so provided in the applicable tariff) on the line; detailed billing showing all 1+ traffic; AT&T's service center phone number to all AT&T end users that contact GTE service centers; number portability for end users; touchtone service; line side answer supervision; GTE designated contact center as single point of contact for customer service; provisioning of 911 service; access to Answer Number Identifier (ANI) Information; all information necessary to permit AT&T to bill end users for access line usage; the same monitoring and diagnostic routines as GTE utilizes on its own facilities; one directory for each line installed; blocking for 1+ international calls, 10XXX1+ international calls 1-900 calls, 1-976 calls DA link, any 1+ service that can be billed to the line but that is not rated, 1-700 calls, 1-500 calls, and in bound international calls where SS7 signaling is available.
- 30.7 When providing Coinless COCOT Lines to AT&T for resale, GTE shall offer the following, to the extent that GTE provides such services and in those jurisdictions and/or central offices where available: originating line screening; billed number screening; PIC protection for all 1+ inter and intraLATA traffic (where inter and intraLATA presubscription is available); one way and/or two way service on the line (if so provided in the tariff); flat service where flat service is required by the applicable tariff, measured service where measured service is required by the applicable tariff, and both flat and measured service where both flat and measured service are required by the applicable tariff; detailed billing showing all 1+ traffic; AT&T's service center phone number to all AT&T end users that contact GTE service center; number portability for end users; touchtone service; GTE designated contact center as single point of contact for customer service; provisioning of 911 service; access to ANI information; all information necessary to permit AT&T to bill end users for access line usage; the same monitoring and diagnostic routines as GTE

utilizes on its own facilities; one directory for each line installed; blocking for any service that can be billed to the line but not rated and all 1+ calls except where local mandate requires access to Directory Assistance.

- 30.8 [Intentionally Deleted.]
- 30.9 When providing Customer Owned Pay Telephone (COPT) Lines to AT&T for resale, GTE shall offer the following to the extent that GTE provides such services and in those jurisdictions and/or central offices where available. Access to all Central Office intelligence required to provide COPT Line pay phone services; far end disconnect recognition; call timing for intra- and InterLATA calls; at the customer's option, one way or two way service on the line in those jurisdictions where available; detailed billing showing all 1+ traffic; AT&T's service center phone number to all AT&T end users; touchtone service; line side supervision in those jurisdictions where available; GTE designated contact center for use by AT&T only as single point of contact for customer service; provisioning of 911 service; access to ANI information; all information necessary to permit AT&T to bill end users for access line usage; the same monitoring and diagnostic routines as GTE utilizes on its own facilities; one directory for each line installed; blocking for 1+ international calls and any 1+ service that cannot be rated by the phone pay line or any operator service.
- 30.10 For any pay phone line provided to AT&T for resale, GTE shall also make available to AT&T any future pay phone line option that GTE provides to any of its own customers using such a pay phone line.
- 30.11 GTE shall adhere to the following additional requirements when providing pay phone lines for resale:
  - 30.11.1 GTE shall provide AT&T with the same call restrictions and fraud protections used by GTE in connection with its pay phones;
  - 30.11.2 GTE shall not block AT&T's existing access to NAI codes;
  - 30.11.3 GTE shall forward all AT&T pay phone customers to the designated AT&T line or trunk group for handling Operator Services or Directory Assistance calls.
  - 30.11.4 [Intentionally Deleted.]